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13 INTERTRUST TECHNOLOGIES CORPORATION

14

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17

18 INTERTRUST TECHNOLOGIES  
19 CORPORATION, a Delaware corporation,

Case No. C 01-1640 SBA (MEJ)

Consolidated with C 02-0647 SBA

20 Plaintiff,  
21 v.  
22 MICROSOFT CORPORATION, a  
22 Washington corporation,  
23 Defendant.

**PATENT LOCAL RULE 4-3 JOINT  
CLAIM CONSTRUCTION AND  
PREHEARING STATEMENT**

24 AND COUNTER ACTION.

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1 Plaintiff and Counter-Defendant Intertrust Technologies Corporation ("Intertrust") and  
2 Defendant and Counter-Claimant Microsoft Corporation ("Microsoft") submit the following  
3 Joint Claim Construction and Prehearing Statement in accordance with Patent Local Rule 4-3.

4 **RULE 4-3(a) and (b)**

5 Claim terms and phrases on which the parties agree are listed at the beginning of Exhibit  
6 B, attached.

7 **RULE 4-3(b)**

8 Attached hereto as Exhibit A is Microsoft's presentation of disputed claim terms  
9 and Microsoft's proposed constructions. Attached hereto as Exhibit B is InterTrust's  
10 presentation of disputed claim terms and InterTrust's proposed constructions. The parties are  
11 discussing a joint presentation that would present each party's position on all disputed terms in a  
12 side-by-side format. If the parties reach agreement on such a submission, the parties will provide  
13 that submission to the Court as a substitute for the attached Exhibits A and B.

14 Attached hereto as Exhibit C is InterTrust's identification of intrinsic and  
15 extrinsic evidence supporting InterTrust's proposed construction for each disputed term and  
16 phrase.

17 Attached hereto as Exhibit D is Microsoft's identification of intrinsic and  
18 extrinsic evidence supporting Microsoft's proposed construction for each disputed term and  
19 phrase.

20 Attached hereto as Exhibit E is a Microsoft statement of reservations.

21 **RULE 4-3(c)**

22 The Court has set aside three days for the Claim Construction Hearing.

23 **RULE 4-3(d)**

24 Attached hereto as Exhibit F is a summary of expert testimony to be presented by  
25 InterTrust. Attached hereto as Exhibit G is a summary of expert testimony to be presented by  
26 Microsoft.

27 **RULE 4-3(e)**

28 Following is a list of other issues the parties believe might appropriately be taken

1 up at the Case Management Conference hearing set for February 13, or such other prehearing  
2 conference as the Court may wish to schedule. Substantive argument on these issues is set forth  
3 in the Joint Case Management Conference Statement filed concurrently herewith.

4 A. Issues upon which the parties agree:

- 5
- 6 1. Live expert testimony should not be presented. Each party will undertake its best  
7 efforts to have its above-designated expert(s) present at the hearing to respond to  
8 questions from the Court.
- 9
- 10 2. Each party will undertake its best efforts to have its declarants available for deposition  
11 within one week of submitting Claim Construction or indefiniteness summary judgment  
12 declarations.
- 13
- 14 3. Normal briefing page limits should be doubled for the Claim Construction briefs.
- 15
- 16 4. There will be no post-hearing briefing, except at the request of the Court.

17 B. Issues which the parties agree should be taken up at the Case Management Conference, but as  
18 to which the parties do not agree on substance:

- 19 1. The number of claim construction briefs to be filed by the parties.
- 20 2. Format of the Claim Construction Hearing.
- 21     a. Whether the parties should present tutorials, and, if so, the length and format of  
22       such a tutorial.
- 23     b. Whether the parties should present a non-tutorial opening statement.
- 24     c. The format and ordering of substantive argument on disputed claim language.
- 25     d. Whether the currently scheduled Mini-Markman proceeding should be devoted  
26       to all of the disputed terms and phrases from the 12 selected patent claims, or a  
27       subset.
- 28

### 3. Whether other issues should be addressed during the Claim Construction Hearing.

a. The anticipated Microsoft motion for summary judgment of indefiniteness, referenced in the Court's Further Case Management Order of November 6, 2002.

b. Whether certain material said to be "incorporated by reference" into several of the asserted patents, does or does not constitute part of the "specification" of those patents for claim construction purposes.

c. Other evidentiary disputes related to the Claim Construction Hearing.

C. Issues Microsoft intends to raise at the Case Management Conference, but which InterTrust believes are not appropriate for that conference:

1. Claim construction and claim indefiniteness discovery disputes.
2. The scope of the stay entered by the court.

Dated: February 3, 2003

Respectfully submitted,

**KEKER & VAN NEST, LLP**

By:

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Corporation

Dated: February 3, 2003

ORRICK HERRINGTON & SUTCLIFFE

By:

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